

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-715

ELMER BEARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 19, 2008

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CV-2002-0586-3]

HONORABLE KIRK JOHNSON,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Elmer Beard argues that the trial court erred in its finding that he willfully violated the terms and conditions of his probation. We affirm.

Beard was placed on probation for ten years for delivery of a controlled substance. He was also ordered to pay a \$1000 fine, \$300 probation fees, and \$150 court costs. Subsequently, a petition to revoke was filed, alleging that Beard failed to report or otherwise follow the conditions of his probation.

At the revocation hearing, the State offered the testimony of probation/parole officer Jo Fredrickson. She testified that Beard had failed to timely report, had been incarcerated in Texas for failure to pay child support, had been charged with battery, and had failed to register as a sex offender. However, none of these alleged infractions were included in the petition to revoke. Also, during the revocation hearing, the original conditions of Beard’s probation were not introduced.

At the hearing, Beard testified that he was blind in one eye and had only fifty percent of his vision in his other eye. He claimed that he attempted to find work but was rejected due to his disability. He admitted that he had been incarcerated in Texas and that he had been charged with two additional crimes since his release. However, he denied that he had failed to register as a sex offender, claiming that he accomplished this in Pine Bluff, Arkansas.

Beard's mother, Margaret Cheatham, also testified. She confirmed Beard's testimony that his blindness prevented him from securing employment, despite his good-faith effort to do so. She also verified that her son had no money and noted that his utilities had been turned off for failure to pay his bills. She also disputed the claim that Beard had failed to report to his probation officer based on her recollection that, on several occasions, she had personally driven him to the meetings. She testified that she had taken him to Pine Bluff so that he could complete his sex-offender registration process.

The trial court ultimately revoked Beard's probation based on the fact that he had willfully violated the terms and conditions of his release as a result of his failure to report, register, and make the required payment. As such, Beard was sentenced to twenty years' imprisonment in the Arkansas Department of Correction. It is from this decision that he now appeals.

In order to revoke a probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). The State need only prove that the defendant committed one violation of the conditions. *Id.* On appeal, the appellant bears the

burden of proving that the trial court's findings are clearly against the preponderance of the evidence. *Id.*

Beard's first argument on appeal is procedural. He claims that he had no notice that he was being revoked for the commission of new criminal offenses and that he was "greatly prejudiced by the trial court's admission of testimony concerning these [offenses]." Beard also claims that "it is important to note that the trial record does not contain the conditions of probation[,] which set forth [his] obligations." However, he is prohibited from bringing these issues on appeal because they are procedural objections that he failed to raise during the hearing. *See, e.g., Whitener v. State*, 96 Ark. App. 354, 356, 241 S.W.3d 779, 781 (2006). Furthermore, the objections in no way mitigate against the other evidence supporting the underlying revocation.

Although Beard also claims that the trial court erroneously found that he willfully violated the terms and conditions of his probation. However, a preponderance of the evidence supports the trial court's conclusion. Fredrickson testified that Beard was placed on probation on June 16, 2003, and that he did not fulfill his probation-reporting or his sex-offender-registration requirements. Further, according to the testimony elicited at the hearing, Beard owed approximately \$1,160 in unpaid fees to the circuit clerk.

Any one of these transgressions would justify the trial court's decision. Further, any mitigation that the trial court could have recognized as a result of Beard's protestations relating to his financial and logistic difficulties was diminished by the cumulative nature of the

violations. As such, we are satisfied that a preponderance of the evidence supports the trial court's finding that Beard willfully violated the terms and conditions of his probation.

Affirmed.

GLADWIN and HUNT, JJ., agree.